

OPINION

This is an appeal as of right pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure. Pursuant to a plea agreement, the Defendant entered open-ended pleas of guilty to four counts of selling drugs. It is from the sentences imposed by the trial court that the Defendant appeals. We reverse the judgment of the trial court and remand this case for resentencing.

The Stewart County grand jury returned an indictment on May 16, 1994 charging the Defendant with eight counts of selling various drugs. Pursuant to a plea agreement, she entered guilty pleas to four of the counts, two of which were Class C felonies and two of which were Class D felonies. The remaining counts were dismissed. Sentencing was left to the discretion of the trial court.

At the Defendant's sentencing hearing, the State presented no evidence and relied solely on the presentence report. The Defendant testified at her sentencing hearing. She was forty-seven years old and single, with three children by prior marriages. She had completed the eleventh grade. She had been self-employed throughout most of her life in businesses in which she worked as a bartender, waitress and cook. Her only two prior arrests occurred during 1990 when a charge of selling drugs was dismissed and she was placed on pretrial diversion for burglary. She successfully completed her period of diversion and that charge was then dismissed. She had no record of convictions. She also reported rather significant health problems.

At the conclusion of the sentencing hearing, the trial judge sentenced the Defendant as a Range I standard offender to the minimum sentence of two years on

each of the Class B felonies and to the maximum sentence of six years on each of the Class C felonies. One of the six-year sentences was ordered to be served consecutively to one of the two-year sentences, for an effective sentence of eight years. The sentences were ordered served in the Department of Correction. The Defendant argues that the trial court erred in denying her probation, erred in setting two of her sentences at the maximum length for her range, and erred in ordering consecutive sentences.

The Criminal Sentencing Reform Act of 1989 provides that the record of the sentencing hearing must include specific findings of fact upon which application of the sentencing principles was based. Tenn. Code Ann. § 40-35-209(c). The purposes of the sentencing laws and certain sentencing considerations are set forth in the statutes. See Tenn. Code Ann. § 40-35-102 and § 40-35-103. Because the trial judge did not make any such findings of fact and because the record does not demonstrate that the trial court considered the applicable sentencing laws and principles, we reverse the judgment of the trial court in sentencing the Defendant and remand this case for resentencing.

First, we note that it appears from this record that the Defendant enjoyed the statutory presumption that she was a favorable candidate for alternative sentencing options. Tenn. Code Ann. § 40-35-102(6). In sentencing the Defendant, the trial judge neither discussed the presumption nor mentioned any evidence which overcame it.

We point out that in sentencing a Defendant, the minimum sentence within the range is the presumptive sentence. Tenn. Code Ann. § 40-35-210(c). If there are enhancing and mitigating factors, the court must start with the minimum sentence in the range and enhance the sentence as appropriate for the enhancement factors and then reduce the sentence within the range as appropriate for the mitigating factors. Tenn.

Code Ann. § 40-35-210(e). When the court imposes a sentence, it must place on the record either orally or in writing what enhancement or mitigating factors it found, if any. Tenn. Code Ann. § 40-35-210(f). In sentencing the Defendant in the case sub judice, the trial judge neither discussed nor even mentioned enhancement or mitigating factors.

In ordering consecutive sentences, the trial judge stated that he was ordering two of the Defendant's sentences to be served consecutively, "because she has a history of professional conduct. She knowingly devoted herself to criminal acts. It obviously was a major source of her livelihood."

While such a finding is not supported by the record, the trial court apparently found that consecutive sentences were warranted because the Defendant is a professional criminal who has knowingly devoted herself to criminal acts as a major source of livelihood. Tenn. Code Ann. § 40-35-115(b)(1). The presentence report reflects that the Defendant was steadily employed from 1976 until the time she was sentenced in 1994. We note that according to the indictment, the eight drug sales with which the Defendant was charged took place during a four-month time frame. According to the presentence report, the Defendant had been the proprietor or manager of an establishment known as "The Fishing Hole" for about two years prior to the time she was sentenced. The trial judge referred to that establishment as a "den of iniquity." While the trial judge was apparently aware of a certain reputation the business may have earned, no evidence in that regard was introduced at the sentencing hearing. This record does not support a finding that the Defendant is a professional criminal such as to warrant consecutive sentences.

For the reasons stated herein, we conclude that the Defendant was not properly sentenced in accordance with the provisions of the Criminal Sentencing Reform Act of

1989. Therefore, the judgment of the trial court is reversed and this case is remanded for further sentencing proceedings.

DAVID H. WELLES, JUDGE

CONCUR:

GARY R. WADE, JUDGE

ROBERT E. CORLEW, III, SPECIAL JUDGE